

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST SESSION, 1996

FILED
Feb. 14, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

JEFF LEON WALKER,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

C.C.A. NO. 02C01-9509-CC-00283
MADISON COUNTY
HON. FRANKLIN MURCHISON
JUDGE
(Post-Conviction Felony Murder)

FOR THE APPELLANT:

JEFF LEON WALKER
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FOR THE APPELLEE:

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OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

ORDER

Appellant was convicted on January 23, 1988, of the offense of felony murder. On May 10, 1995, he filed the pro se post-conviction petition which is the subject of this appeal. In the petition Appellant alleges that the judge of the City of Court of Jackson who presided over Appellant's preliminary hearing was not elected to a full eight year term in accordance with Article VI, Sec. 4 of the Tennessee Constitution. Appellant theorizes that his conviction is void because the preliminary hearing was conducted by an "unconstitutional" judge. See, Town of South Carthage v. Barrett, 840 S.W.2d 895 (Tenn. 1992).

The trial judge dismissed the instant petition as time-barred under the three year statute of limitations for post-conviction petitions. See, Tenn. Code Ann. Sec. 40-30-102 (1990). It is from this dismissal that Appellant files this appeal. We have reviewed the record and the briefs filed in this matter and find that the decision of the trial court should be affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

Appellant's petition was clearly filed beyond the applicable three year statute of limitations. The only question is whether the limitations period should be tolled because Town of South Carthage was not decided until 1992. This precise issue was determined adversely to Appellant's position in the case of Bankston v. State, 908 S.W.2d 194 (Tenn. 1995). Pursuant to Rule 20, Rules of the Court of Criminal Appeals, we therefore affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE

CONCUR:

GARY R. WADE, JUDGE

WILLIAM M. BARKER, JUDGE